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RESOLUTION 778 (1992)

Adopted by the Security Council at its 3117th meeting,
on 2 October 1992

The Security Council,

Recalling its previous relevant resolutions and in particular resolutions 706 (1991) and 712 (1991),

Taking note of the letter of 15 July 1992 from the Secretary-General to the President of the Security Council on Iraq's compliance with the obligations placed on it by resolution 687 (1991) and subsequent resolutions,

Condemning Iraq's continued failure to comply with its obligations under relevant resolutions,

Reaffirming its concern about the nutritional and health situation of the Iraqi civilian population, and the risk of a further deterioration of this situation, and recalling in this regard its resolution 706 (1991) and 712 (1991), which provide a mechanism for providing humanitarian relief to the Iraqi population, and resolution 688 (1991), which provides a basis for humanitarian relief efforts in Iraq,

Having regard to the fact that the period of six months referred to in resolutions 706 (1991) and 712 (1991) expired on 18 March 1992,

Deploring Iraq's refusal to cooperate in the implementation of resolutions 706 (1991) and 712 (1991), which puts its civilian population at risk, and which results in the failure by Iraq to meet its obligations under relevant Security Council resolutions,

Recalling that the escrow account provided for in resolutions 706 (1991) and 712 (1991) will consist of Iraqi funds administered by the Secretary-General which will be used to pay contributions to the Compensation Fund, the full costs of carrying out the tasks authorized by section C of resolution 687 (1991), the full costs incurred by the United Nations in facilitating the return of all Kuwaiti property seized by Iraq, half the costs

of the Boundary Commission, and the cost to the United Nations of implementing resolution 706 (1991) and of other necessary humanitarian activities in Iraq,

Recalling that Iraq, as stated in paragraph 16 of resolution 687 (1991), is liable for all direct damages resulting from its invasion and occupation of Kuwait, without prejudice to its debts and obligations arising prior to 2 August 1990, which will be addressed through the normal mechanisms,

Recalling its decision in resolution 692 (1991) that the requirement for Iraqi contributions to the Compensation Fund applies to certain Iraqi petroleum and petroleum products exported from Iraq before 2 April 1991, as well as to all Iraqi petroleum and petroleum products exported from Iraq after 2 April 1991,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States in which there are funds of the Government of Iraq, or its State bodies, corporations, or agencies, that represent the proceeds of sale of Iraqi petroleum or petroleum products, paid for by or on behalf of the purchaser on or after 6 August 1990, shall cause the transfer of those funds (or equivalent amounts) as soon as possible to the escrow account provided for in resolutions 706 (1991) and 712 (1991); provided that this paragraph shall not require any State to cause the transfer of such funds in excess of 200 million dollars or to cause the transfer of more than fifty per cent of the total funds transferred or contributed pursuant to paragraphs 1, 2 and 3 of this resolution; and further provided that States may exclude from the operation of this paragraph any funds which have already been released to a claimant or supplier prior to the adoption of this resolution, or any other funds subject to or required to satisfy the rights of third parties, at the time of the adoption of this resolution;

2. Decides that all States in which there are petroleum or petroleum products owned by the Government of Iraq, or its State bodies, corporations, or agencies, shall take all feasible steps to purchase or arrange for the sale of such petroleum or petroleum products at fair market value, and thereupon to transfer the proceeds as soon as possible to the escrow account provided for in resolution 706 (1991) and 712 (1991);

3. Urges all States to contribute funds from other sources to the escrow account as soon as possible;

4. Decides that all States shall provide the Secretary-General with any information needed for the effective implementation of this resolution and that they shall take the necessary measures to ensure that banks and other bodies and persons provide all relevant information necessary to identify the funds referred to in paragraphs 1 and 2 above and details of any transactions relating thereto, or the said petroleum or petroleum products, with a view to such information being utilized by all States and by the Secretary-General in the effective implementation of this resolution;

5. Requests the Secretary-General:

(a) To ascertain the whereabouts and amounts of the said petroleum and petroleum products and the proceeds of sale referred to in paragraphs 1 and 2 of this resolution, drawing on the work already done under the auspices of the Compensation Commission, and report the results to the Security Council as soon as possible;

(b) To ascertain the costs of United Nations activities concerning the elimination of weapons of mass destruction, the provision of humanitarian relief in Iraq, and the other United Nations operations specified in paragraphs 2 and 3 of resolution 706 (1991); and

(c) to take the following actions:

(i) transfer to the Compensation Fund, from the funds referred to in paragraphs 1 and 2 of this resolution, the percentage referred to in paragraph 10 of this resolution; and

(ii) use of the remainder of funds referred to in paragraphs 1, 2 and 3 of this resolution for the costs of United Nations activities concerning the elimination of weapons of mass destruction, the provision of humanitarian relief in Iraq, and the other United Nations operations specified in paragraphs 2 and 3 of resolution 706 (1991), taking into account any preference expressed by States transferring or contributing funds as to the allocation of such funds among these purposes;

6. Decides that for so long as oil exports take place pursuant to the system provided in resolutions 706 (1991) and 712 (1991) or to the eventual lifting of sanctions pursuant to paragraph 22 of resolution 687 (1991), implementation of paragraphs 1 to 5 of this resolution shall be suspended and all proceeds of those oil exports shall immediately be transferred by the Secretary-General in the currency in which the transfer to the escrow account had been made, to the accounts or States from which funds had been provided under paragraphs 1, 2 and 3 of this resolution, to the extent required to replace in full the amounts so provided (together with applicable interest); and that, if necessary for this purpose, any other funds remaining in the escrow account shall similarly be transferred to those accounts or States; provided, however, that the Secretary-General may retain and use any funds urgently needed for the purposes specified in paragraph 5 (c) (ii) of this resolution;

7. Decides that the operation of this resolution shall have no effect on rights, debts and claims existing with respect to funds prior to their transfer to the escrow account; and that the accounts from which such funds were transferred shall be kept open for retransfer of the funds in question;

8. Reaffirms that the escrow account referred to in this resolution, like the Compensation Fund, enjoys the privileges and immunities of the United Nations, including immunity from legal proceedings, or any forms of attachment, garnishment or execution; and that no claim shall lie at the instance of any person or body in connection with any action taken in compliance with or implementation of this resolution;

9. Requests the Secretary-General to repay, from any available funds in the escrow account, any sum transferred under this resolution to the account or State from which it was transferred, if the transfer is found at any time by him not to have been of funds subject to this resolution; a request for such a finding could be made by the State from which the funds were transferred;

10. Confirms that the percentage of the value of exports of petroleum and petroleum products from Iraq for payment to the Compensation Fund shall, for the purpose of this resolution and exports of petroleum or petroleum products subject to paragraph 6 of resolution 692 (1991), be the same as the percentage decided by the Security Council in paragraph 2 of resolution 705 (1991), until such time as the Governing Council of the Compensation Fund may decide otherwise;

11. Decides that no further Iraqi assets shall be released for purposes set forth in paragraph 20 of resolution 687 (1991) except to the sub-account of the escrow account, established pursuant to paragraph 3 of resolution 712 (1991), or directly to the United Nations for humanitarian activities in Iraq;

12. Decides that, for the purposes of this resolution and other relevant resolutions, the term "petroleum products" does not include petrochemical derivatives;

13. Calls upon all States to cooperate fully in the implementation of this resolution;

14. Decides to remain seized of this matter.